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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/603,643

06/25/2003

C. David Shook

8142

2758

7590

06/27/2007

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EXAMINER

NGUYEN, CAMTU TRAN

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

06/27/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/603,643  
Filing Date: June 25, 2003  
Appellant(s): SHOOK ET AL.

**MAILED**

**JUN 27 2007**

**Group 3700**

Kenneth Mitchell  
For Appellant

**SUPPLEMENTAL  
EXAMINER'S ANSWER**

This is in response to the reply appeal brief filed August 30, 2006 appealing from the Office action (Examiner's Answer) mailed June 30, 2006.

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**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

Claims 1-20 have been finally rejected, are under appeal. The Final Office Action incorrectly stated claims 1-28 in the cover sheet (PTO-326). Applicant authorized claim 20 cancelled.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

**NEW GROUNDS OF REJECTION**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

Claims 1-19 are rejected under 35 U.S.C. as being unpatentable over Knox et al (U.S. Patent No. 5,814,003) further in view of Sabin et al (U.S. Patent No. 5,984,953).

Claim 3 & 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Ricci et al (U.S. Patent Application Publication No. US2002/0172781) and further in view of Sabin et al (U.S. Patent No. 5,984,953).

Claim 1, 2, 9-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gold (U.S. Patent No. 5,187,814) and further in view of Sabin et al (U.S. Patent No. 5,984,953).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gold (U.S. Patent No. 5,187,814), modified by Sabin, et al (U.S. Patent No. 5,984,953), and further in view of Lyles (U.S. Patent No. 6,001,122).

**(7) Claims Appendix**

A substantially correct copy of appealed claims 1-20 appears on pages 22-25 of the Appendix to the appellant's brief. The minor errors are as follows: claim 20 has been cancelled, authorized in applicant's appeal.

**(8) Evidence Relied Upon**

5,984,953

SABIN et al

11-1999

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5,814,003	KNOX et al	09-1998
5,187,814	GOLD	02-1993
6,001,122	LYLES	12-1999
2002/0172781A1	RICCI et al	11-2002

**(9) Grounds of Rejection****NEW GROUNDS OF REJECTION**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-19 are rejected under 35 U.S.C. as being unpatentable over Knox et al (U.S. Patent No. 5,814,003) further in view of Sabin et al (U.S. Patent No. 5,984,953). Knox et al discloses in Figure 2 anti-embolism stocking comprising elements recited in these claims including a pocket (16). The Knox et al device is capable of holding a gel pack, such as Sabin et al's gel pack.

Claim 3 & 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Ricci et al (U.S. Patent Application Publication No. US2002/0172781) and further in view of Sabin et al (U.S. Patent No. 5,984,953). Ricci et al discloses in Figures 1-3 a compressive stocking comprising part 1 (11) having end (13) and part 2 (12) having end (14), wherein the ends (13, 14) folded on top of each other as shown in Figure 3 to form a pocket or a sleeve to allowing an item such as medicine. The Ricci et al device is capable of holding a gel pack, such as Sabin et al's gel pack.

Claim 1, 2, 9-17, 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gold (U.S. Patent No. 5,187,814) and further in view of Sabin et al (U.S. Patent No. 5,984,953).

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Gold discloses in Figures 6 and 7 a sock (400) with attached heater pack (34) comprising elements as recited in these claims including the sock (400) having a chamber (450) for receiving the heater pack (30) but does not teach a gel pad. Sabin et al discloses a well-known heat pack which relates to a self-heating thermal heat pack provided through the use of preformed reversibly stiffened gel that alters the rate of exothermic chemical reactions. Therefore it would have been obvious to one skilled in the art during the time of the invention to use the Sabin et al's gel pack instead as such would be not only environmentally friendly but also economically sound. With regards to the compression stocking and the understocking, as recited, it is not unreasonable to interpret these elements in the claims given their broadest reasonable interpretation consistent with the supporting description. According to applicant's disclosure on page 8 lines 6-8, the Gold's sock (400) as illustrated in Figure 7 having an upper outer wall (402), a lower outer wall (401), and an inner chamber wall (403) can be easily meet applicant's compression stocking and understocking wherein the Gold's upper outer wall (402) fits over the inner chamber wall (403) and secures the inner chamber wall (403) and the heater pack (30) to the user's or patient's body. The Gold device would be capable of performing the method of treating a patient having venous insufficient via Gold's sock using Sabin et al's gel pack. With regards to claims 5, 6, and 13, the Gold's chamber (450) is bounded by a joint at where the upper wall and the lower wall (401, 402) and the opening end of the chamber where mating hook and pile connectors (441, 442) are found. Therefore it would have been obvious to one of ordinary skill in the art to recognize the Gold's chamber (450), structured as described above, as the same equivalent for the same purpose as claimed.

The introductory statement of intended use and all functional statements have been carefully considered but deemed not to impose any structural limitations on the claims distinguishable over the Gold in view of Sabin et al in the sense of U.S.C. 103 which capable of being used as set forth in these claims.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gold (U.S. Patent No. 5,187,814), modified by Sabin, et al (U.S. Patent No. 5,984,953), and further in view of Lyles (U.S. Patent No. 6,001,122). Gold, as modified by Sabin et al, presented above, discloses in Figures 6 and 7 a sock (400) with attached heater pack (34) comprising elements as recited in these claims including a chamber (450) for receiving a heater pack (30) but does not teach the chamber (450) extends 360 degrees within the sock (400). Lyles discloses in Figures 1-4 a bootie (10) with thermal pack (24) removably situated within a pair of pockets (18) that which are mounted on the sleeve (18) of the bootie (10), the pair of pockets (18) includes a top pocket (18) and a bottom pocket (22) and as illustrated in Figure 4 the pockets (18) extends 360 degrees. Therefore it would have been obvious to one skilled in the art during the time of the invention to modify Gold's chamber such that it would extend 360 degrees within the sock (400) as such would provide the more chamber area.

#### **(10) Response to Argument**

Applicant's comments pertaining to Gold's reference as lacking the gel pad, specifically does not teach the word "gel" have been carefully studied and acknowledged however deemed moot in view of the Knox et al (U.S. Patent No. 5,814,003) and the Ricci et al (U.S. Patent Application Publication No. US2002/0172781) references applied above.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent



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applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

Camtu Nguyen *CT Nguyen*

**A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:**

Frederick Schmidt

*Frederick R. Schmidt*  
FREDERICK R. SCHMIDT  
DIRECTOR  
TECHNOLOGY CENTER 3700

Conferees:

Patricia Bianco

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